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NOTES ON CURRENT LEGISLATION

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Blue Sky Legislation: In 1911 the legislature of Kansas passed "An act to provide for the regulation and supervision of investment companies and providing penalties for the violation thereof" (ch. 133, Laws 1911). This law, popularly called "the blue sky law," has attracted wide attention and so many States have considered or are considering¹ the question of investment company regulation that the subject demands some notice.

The object of the Kansas law is to give the average investor every possible protection against the numerous companies which sell stock, bonds or securities of little or no value and thus to save to Kansas citizens millions of dollars heretofore taken out of the State each year by fake investing concerns which had in reality nothing to sell but "blue sky" and nothing to return to the investor but a highly ornamental stock certificate. The law compels all companies, persons or agents who desire to sell any stocks, bonds or other securities in Kansas to submit information to the banking department which will enable the bank commissioner to determine whether they have a bona fide proposition and one that is worthy of the confidence and consideration of the investor. This information includes a statement in full detail of the plan proposed, a copy of all contracts, bonds or instruments to be made or sold, the name and location of the investment company and an itemized account of its actual financial condition, the amount of its properties and liabilities together with such other information as the bank commissioner may require.

Foreign corporations or companies must file consent that actions may be commenced against them in the proper court of any county by the service of process on the secretary of state and that such serv-

¹ California, Wisconsin, Illinois, Missouri, Michigan, Minnesota, North Dakota, Ohio, Indiana, Maine, Massachusetts, New York, Washington, Arkansas, and Oklahoma. Newspaper dispatches declare that several other States are considering such laws but the writer has received no reliable information on this point. Most of the States mentioned seem to follow the Kansas law with little change.

ice shall be as binding as if commenced against such company itself. It is made the duty of the bank commissioner to examine all statements filed and if he finds such company solvent and that the proposed plans and contracts provide for a fair, just and equitable transaction of business, "and in his judgment promises a fair return on the stocks, bonds and other securities by it offered for sale" he shall issue a statement declaring that the said company has complied with the act and is entitled to do business in the State. If the commissioner does not recognize an investing company as the act provides it cannot do business in the state and agents of such outlaw companies are guilty of a misdemeanor and upon conviction may be fined for each offense not less than one hundred dollars nor more than five thousand dollars, or imprisoned for not less than ninety days, or both fined and imprisoned.

Investment companies are also required to file with the commissioner semi-annual statements of their financial conditions and such other information as he may require, or the right to do business in the State is forfeited. In general it may be said that the supervision of such companies is similar to that of the state banks by the bank commissioner.

During the first eighteen months of the operation of this law more than fifteen hundred companies applied for permission to do business in Kansas. Seventy-five per cent of these were mining, oil, gas and stock selling schemes of a fraudulent nature in which there could be no possible return for the money invested. Of the remaining 25 per cent about half were companies with highly speculative propositions and not at all bona fide investment opportunities. All together less than one hundred of the companies were given the right to do business in Kansas. Many companies withdrew their applications before having them passed upon and they thus lightened the burden of the bank commissioner. A recent statement of the commissioner declares that this law has already saved to the people of Kansas more money than it took to run the entire state government since the law was passed.

The wide publicity given to the Kansas law resulted in agitation for some such legislation in most of our States. Two of them, Connecticut and Arizona passed such laws at the last session of their legislatures. Manitoba and New South Wales have enacted the Kansas law with practically no variation. During this last winter almost every State in the Union has asked for copies of the Kansas law and for informa-

tion as to its workings from the Kansas bank commissioner. At the present writing (March, 1913) more than half of the American legislatures are considering bills regulating blue sky sales and West Virginia and Vermont have recently passed such acts. The Oregon law failed of popular ratification at the last general election.

Among the bills pending several show changes that are worthy of mentioning. The Bosshard bill (194 Senate, introduced in the Wisconsin legislature creates a corporation commission composed of several state officers to administer investment companies, provides for serial numbers upon investment advertisements, declares that the names of all persons who may get rewards or commissions from the sale of any stocks shall appear upon the contracts of subscription and requires a bond of one thousand dollars to be given by anyone to whom the State gives permission to sell such stocks. No attempt is to be made by the commission to determine whether the investments promise a reasonable return, the theory being that such legislation is paternalistic. The Culbertson bill (99 Wisconsin Senate) gives the jurisdiction over the investment companies to the railroad commission, its advocates holding that the validity of company claims can be most easily and definitely determined by the experts of that commission. The procedure of the commission under the law is similar to the method provided for finding physical valuations in the case of railroads.

One Indiana bill (Senate no. 10) creates a state securities board consisting of the governor, secretary of state and auditor which shall appoint an examiner of securities "chosen for merit only" and such assistants as may be necessary. Another (Senate no. 22) declares that the auditor shall supervise investments. The New York bill (433) establishes the office of commissioner of corporations and the governor is empowered to appoint a commissioner for a term of five years. Other features of this bill are like the Kansas law except that the filing fee is very much higher.

The agitation for blue sky legislation in Massachusetts resulted in a resolution (55 Resolves of 1911) providing for a commission to investigate such legislation and the need for it in Massachusetts. This commission reported to the legislature in January, 1913 (Senate no. 157), that it did not seem advisable to adopt the Kansas law, first, because they had doubts of its constitutionality and second, because it would not meet Massachusetts conditions. It was alleged that the sales of stocks and securities were usually made through

bankers and brokers in Massachusetts and that no complaints had been presented to the commission as to their operations. This report carried with it a suggested bill which is now being considered by the legislature. "The basic principle of the recommended bill is to govern and guard against the actions of persons who are engaged in the business of selling such shares and securities. . . . It is also not intended to go too far in the line of paternalism or in making the Commonwealth an insurer of the investments of its private citizens. For this reason we do not recommend provisions requiring dealers to be licensed" but "the Commonwealth may well furnish fullest information to its inhabitants as to any form of business investment which may come within the terms of the act." This bill provides that the commissioner of corporations may stop the sale of securities if the provisions of the act are not complied with and he may advertise in the press or otherwise that certain securities are being sold without compliance with the act, that is, without the filing of information as to the character of the securities and a statement of financial conditions. The bill also provides for an appeal from the commissioner to a board consisting of the bank commissioner, the receiver-general of the State and the director of the bureau of statistics.

Another draft of such a law appears in a resolution adopted February 2, 1913, by the board of governors of the Investment Bankers Association of America. This resolution declares that "any measure requiring the payment of a registration fee of appreciable size or imposing too burdensome requirements as a preliminary to doing business, or compelling an examination and approval of each security before it may be offered for sale, will inevitably tend to narrow the number of dealers seeking to do business and the number of sound securities in which the citizens of the enacting State may invest." The general plan of the draft suggested by this association includes—(1) the right of some state officer to issue an order to a dealer not to offer for sale in the State securities which seem not to be offered in good faith. An appeal to the state courts is open to any such dealer upon receiving such an order; (2) It includes the filing of certain information as a prerequisite of doing business in the State as a notice that a dealer wishes to do business and as an opportunity for the officer to investigate if he wishes; (3) the fee for such filing should be small and the bill should apply to all who deal in securities even to banks and brokers; and (4) the act should be narrowed to apply only to new securities and those of doubtful value, excluding, of course, such invest-

ments as federal or municipal bonds. Securities of corporations the bonds of which are made a legal investment for savings banks should also be exempted from the operations of the law.

An examination of these two drafts and of those patterned upon the Kansas law will show the difference in theory upon which they proceed. The former recognize that investments are risks taken by the individual and there must be no attempt on the part of the State to guarantee them or pass upon the question of "reasonable profit or return." Moreover the business of regulation must be largely informational and a license to do business ought not to be required. There must also be an appeal from the action of the commission to an administrative board or to the courts. The latter declare that all securities sold within the State (with various exceptions such as government bonds and stocks of going utility concerns) must be approved by state authorities, that they should show a probable return upon the investment, and that the commissioner's decision is final, in short that stock selling concerns shall be supervised in exactly as strict a manner as are banks and trust companies.

It should be noted that within the last few weeks the Kansas law has been amended (Senate no. 485) to include companies selling land, making it incumbent upon them to show that the land held for sale is good and capable of development and that the improvements advertised have really been made. Provision is also made for licensing reputable investment brokers requiring only that they make a report each month of their sales and that they declare the sort of stocks and securities they have for sale. The state charter board is now associated with the bank commissioner in determining whether or not a company is to be allowed to sell securities in Kansas.

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County Legislation: Special legislation affecting counties has been on the increase in recent years. Such legislation has to do with the organization of the counties, with salaries of county officers, with financial and administrative powers. In order to remove the evils of special legislation, two methods, following the trend of municipal legislation, have begun to be employed. One of these methods is the application of the principle of "home rule" for counties which allows the voters of the county to determine their own form of government. This principle has been adopted in the State of California. The second method is to have a general county law with classification of